

**MINUTES OF THE
HOUSE ETHICS COMMITTEE**

Wednesday, October 8, 2008 – 9:00 a.m. – Room C445 State Capitol

Members Present:

Rep. Todd E. Kiser, Chair
Rep. LaWanna Lou Shurtliff, Cochair
Rep. Douglas C. Aagard
Rep. Stephen D. Clark
Rep. David Litvack
Rep. Karen W. Morgan
Rep. Carol Spackman Moss
Rep. Merlynn T. Newbold

Staff Present:

Mr. Michael E. Christensen, Director
Mr. John Q. Cannon, Managing Policy Analyst
Mr. John L. Fellows, General Counsel
Mr. Eric N. Weeks, Deputy General Counsel
Ms. Joy L. Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Rep. Kiser called the meeting to order at 9:10 a.m.

MOTION: Rep. Aagard moved to approve the minutes of the July 7, 2008 meeting. The motion passed unanimously.

2. Consolidated Ethics Complaints Filed by Representatives Hughes, Garn, and Dee Against Representative Hughes and by Representatives Hansen, McGee, and Riesen Against Representative Hughes

Rep. Kiser distributed and read "Opening comments about the Legislative Ethics Committee Process." He explained that no member of the Committee or staff may disclose publicly any information received by the Committee concerning any alleged violation until the member of the House charged in the violation has received the Summary of the Preliminary Inquiry. He asked that members of the media and other interested persons respect the responsibility committee members and staff have to confidentiality until the committee's work is done. Chair Kiser highlighted the process the Committee will follow. A count that is not proved is dismissed.

Mr. Fellows explained that staff is guided by what the Committee directs them to do. He said it can be argued that because of the textual constitutional commitment to the legislative branch of the power to discipline its members, that the constitutional provision supercedes the Open and Public Meetings Act. He recommended, however, that the Committee take a motion under the Open and Public Meetings Act to close the meeting in order to comply with the Act and legislative rule.

Rep. Kiser distributed and discussed "Chair and Co-chairs Proposal on Public Comment." He stated it is the view of the chair and co-chair that the Committee's unique role -- to seek to thoroughly evaluate and weigh the charges in the complaint while at the same time seeking to protect the rights of the individual House members who are the subjects of the complaints -- requires a decision not to receive comment or testimony from the public other than in the context of actual sworn testimony before the Committee.

MOTION: Rep. Clark moved that this portion of the meeting be closed to public comments. The motion passed with Rep. Morgan and Rep. Moss voting in opposition.

Members of the Committee were asked to pledge to the questions contained in "Ethics Committee Member Pledge" which was administered by the chair and co-chair. Each member of the Committee pledged to the questions asked.

MOTION: Rep. Newbold moved that the Committee meet on October 10, October 13-17, and thereafter as necessary. The motion passed unanimously.

Rep. Kiser distributed and reviewed the order of the chair and co-chair.

MOTION: Rep. Litvack moved to approve the order. The motion passed unanimously.

Rep. Kiser referred to the ethics complaints that have been received. He distributed and reviewed "Chairs' Process Recommendations." He felt the Committee could move forward more efficiently if the complaints are consolidated.

MOTION: Rep. Clark moved that the first count alleged in the complaint filed by Representatives Hughes, Garn, and Dee against Representative Hughes be consolidated with the complaint filed by Representatives McGee, Riesen, and Hansen against Representative Hughes; and that evidence and deliberation on all of those counts be considered simultaneously. The motion passed unanimously.

Mr. Fellows reviewed with the Committee each point of the second motion contained in "Chair's Process Recommendations."

MOTION: Rep. Newbold moved that the Ethics Committee proceed in the following order:

- make the determinations required by JR6-4-102, on the consolidated complaint against Hughes;
- if the Committee votes to adjudicate some or all of the allegations in the Hughes complaint, begin the preliminary inquiry by receiving testimony and evidence on the allegations in the Hughes complaint, beginning with Charge Number 1 and proceeding sequentially to Charge Number 6;
- at the conclusion of testimony and evidence on the Hughes complaint, take the Hughes complaint under advisement;
- make the determinations required by JR6-4-102 on the complaint filed by Representatives Hughes, Garn, and Dee against Representatives Riesen;
- if the Committee votes to adjudicate some or all of the allegations in the Riesen complaint, begin the preliminary inquiry by receiving testimony and evidence on the allegations against Representative Riesen in the Riesen complaint, beginning with Number 2 and proceeding sequentially to Number 7;
- at the conclusion of testimony and evidence on the Riesen complaint, take the Riesen

- complaint under advisement;
- begin deliberations on whether any of the alleged violations in the Hughes and Riesen complaint did occur;
- if the Committee determines that one or more alleged violations occurred and the Representative found to have committed the violation has waived his right to a Disciplinary Hearing, vote on whether or not each alleged count has been proved and if necessary, recommend a penalty;
- if the Committee determines that one or more alleged violations occurred and the Representative found to have committed the violation has declined to waive his right to a Disciplinary Hearing, follow the procedure required by rule to initiate a Disciplinary Hearing.

The motion passed unanimously.

Rep. Kiser distributed "General Evidentiary Standards for Preliminary Inquiry," which are general standards proposed for adoption by the Committee to supplement and provide clarity to existing procedure contained in the legislative rules.

Mr. Weeks explained that the Committee will follow state courts' rules on certain evidence that is considered privileged. He stated that members are permitted to individually determine how much weight is given to hearsay evidence.

MOTION: Rep. Litvack moved to approve "General Evidentiary Standards for a Preliminary Inquiry." The motion passed unanimously.

Rep. Kiser distributed "Jurisdiction and Claim Review Script." He explained that he and Rep. Shurtliff met with staff and it is the recommendation of the chair and co-chair that the Hughes complaint be considered by the Committee.

MOTION: Rep. Litvack moved to recommend that the Hughes complaint be considered. The motion passed unanimously.

Rep. Kiser indicated that the Committee must determine whether or not the violations alleged in the complaint are within the jurisdiction of the Committee. He discussed the authority of the Committee to review certain charges against a member of the House. He said that both he and Rep. Shurtliff believe that each of the allegations in the complaint are within the jurisdiction of the Committee.

MOTION: Rep. Aagard moved that the Committee have jurisdiction. The motion passed unanimously.

Rep. Kiser stated the Committee must determine if the complaint merits further inquiry. If so, the rules require the Committee to begin a preliminary inquiry.

Minutes of the House Ethics Committee
October 8, 2008
Page 4

MOTION: Rep. Newbold moved that the Committee finds that the complaint against Representative Hughes merits further inquiry and that the meeting should become a preliminary inquiry according to legislative rule. The motion passed unanimously.

Rep. Kiser read a statement regarding why the meeting should be closed.

MOTION: Rep. Litvack moved that the Committee move into a closed meeting. The motion passed with Rep. Morgan and Rep. Moss voting in opposition.